

California Regional Water Quality Control Board
North Coast Region

CLEANUP AND ABATEMENT ORDER NO. R1-2007-0011
And
REQUIREMENT FOR TECHNICAL REPORTS

For

FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO.1
I.D. No. 1B84083OMEN

Mendocino County

The California Regional Water Quality Control Board, North Coast Region, finds that:

1. The Regional Water Board adopted Waste Discharge Requirements Order No. R1-2005-0096 (NPDES Permit No. CA002378) for Fort Bragg Municipal Improvement District No.1 (hereinafter the Discharger or Permittee) on October 12, 2005. The Order includes discharge prohibitions and permit provisions that must be met at all times.
2. The *Water Quality Control Plan for the North Coast Region* (Basin Plan) designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those water quality objectives, protect present and future beneficial water uses, protect public health, and prevent nuisance.
3. In June 2006, the Discharger reported two spills from an 8-inch diameter force main located east of Pudding Creek Beach. Ruptures in the pipeline, known as the Pudding Creek Force Main (Force Main), resulted in a discharge of untreated wastewater in excess of 2,500 gallons to an area adjacent to Pudding Creek on June 1, 2006 and another spill of approximately 700 gallons to the same area on June 16, 2006. In 1989, 1999, 2003, and 2005, the Discharger reported similar ruptures at various sections of the Pudding Creek Force Main that resulted in unpermitted discharges to Pudding Creek. In each case, the Discharger has taken emergency actions to temporarily repair the leaking pipe.
4. The Pudding Creek Force Main runs approximately 2,900 feet from the Pudding Creek Pump Station, southward along the beach to Pudding Creek, south under Pudding Creek, and up the bluff where the pipeline terminates into a manhole at the intersection of Elm Street and Highway One. Much of the pipeline along Pudding Creek Beach was installed in 1973/74 as part of the Pudding Creek Interceptor Project. In 1985, to fix a sewage leak discovered in the Force Main where it passes under Pudding Creek, the Discharger replaced a 450 foot stretch of the original Force Main. The section replaced ran from the north side of Pudding Creek, under Pudding Creek, and up the southerly bank to the south side of the Highway One Bridge that crosses Pudding Creek.

5. On January 3, 2006, the Discharger reported that the portion of the Force Main buried under Pudding Creek had become exposed, allegedly as a result of a release of an excessively large volume of water from a privately-owned dam on Pudding Creek. A site inspection by the Regional Board on December 28, 2006 revealed that the Force Main remains exposed and is susceptible to damage or breakage from large floating debris.
6. Pudding Creek is a coastal stream that flows into the Pacific Ocean at the northern city limits of Fort Bragg. The beneficial uses of Pudding Creek include industrial process supply (PRO); water contact recreation (REC-1); non-contact water recreation (REC-2); migration of aquatic organisms (MIGR); spawning, reproduction and/or early development (SPWN); cold freshwater habitat (COLD); and rare, threatened and endangered species (RARE). The creek also supports populations of both coho salmon and steelhead.
7. Portions of Order No. R1-2005-0096 that will be violated if damage to the Force Main resulted in a discharge of untreated wastewater are as follows:

A. DISCHARGE PROHIBITIONS

2. Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the CWC is prohibited.
4. The discharge of untreated waste or partially treated waste from anywhere within the collection, treatment, or disposal facility, except as provided for bypasses under the conditions in General Provision H.13 of this Order, is prohibited.¹

H. GENERAL PROVISIONS

4. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment.

5 Proper Operation and Maintenance

- a. The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control

¹ Provision H.13 of Order No. R1-2005-0096 establishes conditions, consistent with federal provisions in 40 Code of Federal Regulations 122.41(m), under which bypass of treatment facilities is allowable. In general, bypass of treatment facilities is prohibited unless the bypass is necessary to either: (1) perform maintenance that cannot feasibly be done any other time; or (2) avoid loss of life, personal injury, or serious property damage. These conditions are not applicable to the threatened discharge that is the subject of this enforcement order.

(and related appurtenances) that are installed or used by the Permittee to achieve compliance with this Order. Proper operation and maintenance includes adequate laboratory quality control and appropriate quality assurance procedures. The provision requires the operation of backup or auxiliary facilities of similar systems that are installed by the Permittee only when necessary to achieve compliance with the conditions of the Order. [40 CFR 122.41(e)]

8. The portions of the Water Quality Control Plan for the North Coast Region (Basin Plan) that will be violated if damage to the Force Main resulted in a discharge of untreated wastewater are as follows:

“Section 4. IMPLEMENTATION PLANS

POINT SOURCE MEASURES

WASTE DISCHARGE PROHIBITIONS:

The Regional Water Board declares that point source waste discharges, except as stipulated by the Thermal Plan, the Ocean Plan, and the action plans and policies contained in the Point Source Measures section of this Water Quality Control Plan, are prohibited in the following locations in the Region:

North Coastal Basin

6. On all other coastal streams and natural drainageways that flow directly to the ocean all new discharges will be prohibited. Existing discharges to these waters will be eliminated at the earliest practicable date.”
9. The Discharger threatens to cause or permit waste to be discharged into waters of the State in violation of its waste discharge requirements order and the Basin Plan. Additionally, a discharge of inadequately treated waste would affect water quality and could be deleterious to beneficial uses of State waters and impair water quality to such a degree that it becomes a threat to public health and public resources, creating a condition of pollution or nuisance. Without remedial action, the threatened pollution or nuisance remains.
10. Water Code section 13304(e) defines “threatened” as “a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.”
11. This Cleanup and Abatement Order is an enforcement action by a regulatory agency being taken for the protection of the environment and is exempt from the

provisions of the California Environmental Quality Act (Pub. Resources Code, section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15308 and 15321.

12. This Order provides a time schedule to the Discharger for immediate action to reduce the potential for a catastrophic failure of the Pudding Creek Force Main and for developing a procedure to notify the public in the event of a sewer spill that may affect public health.
13. To minimize the potential for future pipeline failures along the Pudding Creek Beach, the Regional Water Board intends to issue a cease and desist order, requiring the Discharger to permanently repair or replace the compromised sections of the Force Main from the Pudding Creek Pump Station to the manhole at Elm Street and Highway One. System upgrades will entail evaluating system components, conducting environmental review, securing funding, planning, designing, and construction and will, necessarily, take an extended time period for completion.
14. The Regional Water Board reserves its authority to take any enforcement action authorized by law. Violations of this Cleanup and Abatement Order may result in the Regional Board imposing administrative civil liabilities in accordance with applicable laws, including Water Code sections 13350 and 13385, issuing a time schedule order pursuant to Water Code section 13308, or referring the issue to the Attorney General for injunctive relief or monetary remedies.
15. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with section 13320 of the Water Code and section 2050 of title 23 of the California Code of Regulations. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. Such request should be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code section 13304, the Discharger shall abate the above-described discharges of waste and threatened discharges of waste to surface waters in accordance with the following:

1. The Fort Bragg Municipal Improvement District No.1 shall clean up and abate the above-described conditions that threaten to cause a discharge of waste contrary to the discharge requirements contained in Finding No. 7 and Basin Plan

prohibitions in Finding No. 8 (above) in accordance with the following time schedule:

- a. By February 16, 2007, submit a plan to the Regional Water Board describing emergency actions the Discharger will take to protect the exposed Force Main under Pudding Creek from damage or rupture, to prevent an unauthorized discharge of wastewater.
 - b. By March 19, 2007, complete emergency repairs described in the report submitted pursuant to Task 1.a, above.
 - c. March 30, 2007, develop, submit and commence implementation of a procedure to notify the public of sanitary sewer overflows and spills that have the potential to impact public health and safety.
2. If the Executive Officer of the Regional Board finds that the Discharger fails to comply with the provisions of this Order, the Executive Officer may take all actions authorized by law, including referring this matter to the Attorney General for judicial enforcement or issuing a complaint for administrative civil liability pursuant to Water Code sections 13350 and 13385. The Regional Board reserves its right to take any enforcement actions authorized by law.
 3. If, for any reason, the Discharger is unable to perform any activity or submit any documentation in compliance with the work schedule that will be submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time. The extension request shall include justification for the delay. An extension may be granted for good cause, in which case this Order will be accordingly revised in writing.

Ordered by _____
Catherine E. Kuhlman
Executive Officer

January 29, 2007

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